IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5709 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P.K.THAKKAR CONSTRUCTION PVT.LTD.

Versus

TEXTILE TRADERS CO OP BANK LTD

Appearance:

1. Special Civil Application No. 5709 of 2004

MR NANDLAL THAKKAR for Petitioner No. 1-4

MR TUSHAR MEHTA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 13/10/2004

CAV JUDGEMENT

This petition is already admitted. With the consent of learned advocates appearing on behalf of the parties including Shri Nandlal Thakkar, learned advocate for petitioners, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Gujarat State Cooperative Tribunal, dated 23rd April 2004 in Revision Application No. 156 of 2004 below Stay Application and in refusing to grant stay of order passed by the Board of Nominees passed below Exh. 72 during the pendency of the revision application.

3. Shri Nandlal R. Thakkar, learned advocate appearing on behalf of the petitioners had vehemently submitted that during the pendency of the Revision Application No. 156 of 2004 the Tribunal ought to have granted stay of the order passed below Exh. 72, otherwise the entire Revision Application would become infructuous more particularly in view of the fact that the revision application is admitted by the Tribunal. He has relied upon the judgment of this Court in the case of Nagji Uka Vs. Administrator of Sakedi Agricultural Cooperative Society Ltd and Others, reported in XIV 1977 Gujarat Law Times Page 83. Shri Thakkar has also submitted that considering the aforesaid Judgment in the case of Nagji Uka (Supra), this Court had already admitted the present Special Civil Application and had granted interim relief and therefore the said interim relief should be continued till hearing of revision application by the Tribunal and if this Court is not in agreement with the judgment and order passed by this Court in the case of Nagji Uka Vs. Administration of Sakedi Agricultural Cooperative Society Ltd., & ors. (Supra), reported in 1977 XIV GLT Page 83 then this Court should refer the matter to Division Bench and/or Larger Bench. He has also further submitted that the petitioners had asked for certain documents which are very much required for the purpose of hearing of the Leave to Defend Application and as the order passed by the Board of Nominees below Exh. 72 is ex facie illegal the petitioners had preferred revision application which is pending before the Tribunal, and therefore requested to continue the interim relief granted by this Court while admitting the present Special Civil Application and to direct the Tribunal to decide and dispose of the revision application as early as possible. Shri Thakkar has relied upon judgments reported in AIR 1972 S.C. Page 2379 and AIR 1992 Gujarat Page 138 with regard to discovery of documents. So far as the reliance placed upon the judgment with regard to discovery of documents are concerned, it is not necessary to deal with the same at this stage as that is not the subject matter of this petition and application Exh. 39 is yet to be decided by the Board of Nominees Court.

3. Shri Tushar Mehta, learned advocate appears on behalf of respondent No.1 Bank. He had submitted that this is nothing but an attempt on the part of the petitioners to delay the proceedings and to see that the leave to defend application is not heard. He had also submitted that it is not that in all matters whenever the revision applications/appeals are admitted and/or pending the revisional authority/appellate authority must grant stay. He had submitted that at the most the revisional authority/appellate authority is required to assign reasons for not granting interim relief during the pendency of the revision applications/appeals. He had further submitted that earlier also the petitioners had tried to see that the Leave to Defend Application is not heard and this Court had while allowing the Special Civil Application preferred by the respondent No.1 Bank has observed that it appears that the petitioners herein are trying to delay the hearing of Leave to Defend Application and therefore Shri Mehta had requested not to exercise the discretionary powers under Article 227 of the Constitution of India.

4. Heard the learned advocates appearing on behalf of the parties. Few facts are necessary, for the purpose of determination of the Special Civil Application, which are as under.

The respondent No.1 Bank has filed Summary Lavad Suit No. 985 of 2003 against the petitioners under Section 99(4) of the Gujarat Cooperative Societies Act ["the Act" for short] to recover Rs. 42,75,450.99 ps. with interest. Summonses have been served upon the petitioners, original-defendants, and as per the procedure they are required to file Leave to Defend Application within 10 days. Instead of filing Leave to Defend Application within the time stipulated, the petitioners raised issue of jurisdiction by filing Application Exh. 15. The Board of Nominees dismissed the said application vide order dated 30th April 2003 against which the petitioners preferred Revision Application No. 196 of 2003. The petitioners preferred stay application in the revision application which was rejected by the Tribunal against which the petitioners had preferred Special Civil Application No. 6992 of 2003, and in the said Special Civil Application also, the similar contention was raised to the effect that during the pendency of the revision application the Tribunal ought to have granted interim relief and the petitioners relied upon the judgment of this Court in the case of Nagji Uka Vs. Administrator of Sakedi Agricultural

Cooperative Society Ltd & Others (Supra). The aforesaid Special Civil Application No. 6992 of 2003 with Civil Application No. 3662 of 2003 came to be heard by the learned Single Judge of this Court. This Court [Coram: Mr. K.A. Puj, J.] by his judgment and order dated 23rd June 2003 dismissed the aforesaid Special Civil Application No. 6992 of 2003. It appears that, thereafter, the Revision Application No. 196 of 2003 came to be heard, decided and disposed of by the Gujarat State Cooperative Tribunal and the Tribunal dismissed the Revision Application No. 196 of 2003 by judgment and order dated 29th August 2003 and directed the petitioners to file his Leave to Defend Application on 10th September 2003 and directed the Board of Nominees to decide the issue of jurisdiction by taking evidence. Being aggrieved and dissatisfied with the judgment and order dated 29th August 2003 passed by the Gujarat State Cooperative Tribunal in Revision Application No. 196 of 2003 the respondent Bank preferred Special Civil Application No. 13345 of 2003 in so far as the Tribunal directed the Board of Nominees to decide the issue of jurisdiction by taking evidence. Thereafter this Court passed a detailed order in Special Civil Application No. 13345 of 2003 and allowed the aforesaid Special Civil Application with some remarks about the conduct of petitioners herein. At this stage Shri Thakkar, learned advocate appearing for the petitioners had submitted that a review application is filed by the petitioners in the aforesaid Special Civil Application No. 13345 of 2003, which is pending. At this stage, Shri Tushar Mehta, ld. advocate appearing on behalf of the respondent No.1 Bank had submitted that except filing the review application nothing further is done in the aforesaid application and that too only on a technical ground to the extent that the petitioners have contended in the said review application that they have not waived the Rule in the aforesaid Special Civil Application. It appears that, thereafter, the petitioners had filed the Leave to Defend Application and before even the said Leave to Defend Application could be heard by the Board of Nominees, the petitioners had given another Application below Exh. 39 by which the petitioners had requested for passing appropriate order directing the respondent No.1 Bank to give inspection of certain documents and till the inspection of documents are given the Leave to Defend Application should not be heard. Thereafter the Bank had given an Application below Exh. 72 and had prayed for hearing of Leave to Defend Application as per Section 99(4) of the Act and Rule 41(a), and after hearing both the parties the Board of Nominees had passed an order in Application below Exh.72 on 29th March 2004 directing for

hearing of the Leave to Defend Application immediately. Being aggrieved and dissatisfied with the order passed below Exh. 72 the petitioners had preferred the aforesaid Revision Application before the Gujarat State Cooperative Tribunal being Revision Application No. 156 of 2004 in which Stay Application was submitted. By a detailed and reasoned order dated 23rd April 2004, the Tribunal dismissed the Stay Application preferred in Revision Application No. 156 of 2004. Being aggrieved and dissatisfied with the same, the petitioners original-defendants have preferred the present Special Civil Application.

5. This is a petition under Article 227 of the Constitution of India. The law on the question of scope and ambit of jurisdiction of this Court, in the context of powers which this Court may exercise under Article 227 of the Constitution of India, is already settled by the Hon'ble Supreme Court in the case of Suryadevrai Vs. Ramchandradevrai - 2003(6) SCC 675. The Supreme Court has observed that while examining a petition under Article 227 of the Constitution of India, a writ of certiorari by the exercise of supervisory jurisdiction is not available to correct mere errors of fact or of law unless the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. In the present case, it is an admitted position that the Lavad Suit is filed in the month of February/March 2003. The suit is a summary suit. On being served with the summons defendants are required to file an application for Leave to Defend within a period of 10 days and thereafter immediately the leave to defend applications are required to be heard and decided by the Board of Nominees. As stated above, though summary suit is filed in the month of February/March 2003 till date the Leave to Defend Application is not heard and decided by the Board of Nominees. The only reason is that the petitioners who are the defendants have filed one or other application before the Board of Nominees and thereafter before the Tribunal and thereafter the present Special Civil Application before this Court. This shows the conduct on the part of the petitioners-defendants against whom the summary suit is filed for an amount of Rs. 42,75,450.99 ps. with interest. It is not that in each and every case whenever the revision application/appeals are filed and pending the revisional authority and/or the appellate authority are required to grant stay. The only thing is that the said authorities are required to assign reasons

for not granting interim relief during the pendency of the revision application/appeals. The only contention of the petitioners is that during the pendency of the revision application the Tribunal ought to have granted the stay and the reliance is placed on the judgment of this Court reported in 1977 GLT Page 83. This judgment was also relied upon by the petitioners when the petitioners preferred Special Civil Application No. 6992 of 2003 when earlier the stay was refused by the Tribunal during the pendency of revision application No. 196 of 2003. The aforesaid judgment in the case of Nagji Uka (Supra) is considered by this Court while disposing of the Special Civil Application No. 6992 of 2003 more particularly in Para 7 of the judgment and after considering the aforesaid judgment this Court had dismissed the aforesaid Special Civil Application No. 6992 of 2003 confirming the order passed by the Gujarat State Cooperative Tribunal in not granting interim relief during the pendency of the revision application. This Court is also of the opinion that while rejecting the stay application, it is not necessary to grant stay in all cases where the revisions/appeals are admitted and pending. The only thing is that the authorities are required to assign reasons. In the present case, a detailed reasoned order is passed by the Tribunal in not granting the stay during the pendency of the revision application. Even considering the conduct of the petitioners, the petitioners are not entitled to the relief which they have prayed for. The Tribunal has also considered the fact that Leave to Defend Applications are required to be heard by the Board of Nominees as early as possible and that in the Leave to Defend Application the petitioners can take all the points which are available to him under the law and even for which the inspection of documents are asked by the petitioners and only after the Leave to Defend Application is heard it can be said to be a proceeding further with the suit and during the course of the suit the petitioners' request for inspection of the documents can be considered. In the facts and circumstances, it cannot be said that the Tribunal has committed any error and/or jurisdictional error by not granting the stay during the pendency of the revision application. On the contrary, the Tribunal is justified in not granting the stay during the pendency of the revision application.

6. Considering the aforesaid facts and circumstances of the case and considering the reasoning given by the Tribunal in its order dated 23rd April 2004 in rejecting the stay application filed in Revision Application No. 156 of 2004, the order cannot be said to be in any way

illegal and/or arbitrary and/or it cannot be said that the Tribunal has committed any jurisdictional error much less an error of law which requires interference of this Court exercising the power under Article 226 of the Constitution of India. Under the circumstances, there is no substance in the present Special Civil Application. Hence, the petition is dismissed. Rule is discharged with no order as to costs. The ad-interim relief granted earlier stands vacated forthwith.

[M.R. Shah, J.]
rmr.

At this stage, Shri Nandlal Thakkar, learned advocate appearing for the petitioners had submitted that an appropriate order be passed directing the Gujarat State Cooperative Tribunal to decide and dispose of the revision application as early as possible and the interim relief granted earlier may be continued. The aforesaid prayer is already dealt with by me. However, it will be open for the petitioner to move an appropriate application before the Tribunal for early hearing of the Revision Application No. 156 of 2004 and as and when such an application is made the Tribunal is directed to consider the same looking to their Board. However, Shri Thakkar has requested to continue the ad-interim relief granted earlier for a period of 2 weeks. In the facts and circumstaqnces of the case, the prayer is accepted. the ad-interim relief granted earlier is directed to be continued till 25th October 2004.

[M.R. Shah, J.]
rmr.